

July 22, 1996

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
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REPORT AND DECISION ON APPEAL FROM NOTICE AND ORDER.

SUBJECT: Department of Development and Environmental Services File No. E91C1369

DAVID & SANDRA STARK
Code Enforcement Appeal

Location: 1907 East Lake Sammamish Place SE

Owner: David & Sandra Stark
1907 East Lake Sammamish Place SE
Redmond, WA 98053

Appellants: David & Sandra Stark
1907 East Lake Sammamish Place SE
Redmond, WA 98053

PRELIMINARY MATTERS:

Notice of appeal received by Examiner: June 13, 1996
Statement of appeal received by Examiner: June 13, 1996
Department Preliminary Report issued: July 1, 1996

EXAMINER PROCEEDINGS:

Hearing Opened: July 15, 1996
Hearing Closed: July 15, 1996

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Office of the King County Hearing Examiner.

ISSUES ADDRESSED:

- County Shoreline Management Program
- Covered moorages - Lake Sammamish

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. Following up upon correspondence dating back to late 1991, on May 24, 1996 the King County Department of Development and Environmental Services issued a Notice and Order to David and Sandra Stark at 1907 East Lake Sammamish Place SE, alleging a violation of KCC 25.16.120.B for maintenance on the property of a covered mooring structure in violation of the County Shoreline Management Program.

2. The appellants have filed a timely appeal of the Notice and Order. The appeal alleges that the offending canopy was installed as a removable accessory to a permanent boat lift for which a valid County permit was issued. The appeal also alleges that many other such boat lift canopies exist on Lake Sammamish and that selective enforcement of code requirements against this property is either illegal discrimination or simply unfair. By consent of the affected parties, the public hearing on this appeal was consolidated with that for two other similarly situated properties which received identical code enforcement citations.
3. The essential facts are not in dispute. Pursuant to the Shoreline Management Act of 1971, King County in 1978 adopted its Shoreline Management Program and implementing regulations. KCC 25.16.120.B contains an unconditional requirement that "no covered pier, covered moorage, covered float, or other covered structure is permitted waterward of the ordinary high water mark". It is uncontested that the appellants' boat lift canopy was constructed subsequent to 1978 on Lake Sammamish at a location waterward of the ordinary high water mark. The fact that the canopy is removable does not exempt it from the definition of covered moorage contained within KCC 25.16.120.B. The appellants have offered no evidence demonstrating that the permit issued for the boat lift facility includes approval of a boat lift cover.
4. It is also uncontested that the appellants' property lies along a high bank portion of the Lake Sammamish shoreline with the consequence that the boat lift canopy does not create a view obstruction to other shoreline properties or to the public generally. Therefore, it seems unlikely that the appellants' boat lift cover creates an adverse visual impact of the type sought to be prevented by KCC 25.16.120.B. While this fact does not provide a defense to the absolute terms of the ordinance, it may suggest a rational basis upon which the appellants may seek from the King County Council an amendment to KCC 25.16.120.B to permit covered moorages which are located below surrounding topographical grade. In like manner, the fact that many other covered moorages exist on Lake Sammamish does not constitute a defense to the instant Notice and Order but may provide a rationale for community support of reasonable amendments to the provisions of the shoreline code discussed above.

CONCLUSIONS:

1. The appellants' boat lift canopy is a covered structure within the meaning of KCC 25.16.120.B, and its location waterward of the ordinary high water mark for Lake Sammamish constitutes a violation of the County shoreline code.
2. The metal frame which supports the fabric canopy does not violate the shoreline code, per se. However, such structures may be abated if necessary to obtain compliance with code provisions prohibiting covered structures.

DECISION:

The appeal is DENIED.

ORDER:

1. No penalty shall be imposed for violation of the Notice and Order if the boat lift canopy is removed by November 1, 1996.
2. If after November 1, 1996, the metal framework which supports the boat lift canopy is used to support an illegal covered structure in violation of the County shoreline code, its removal shall be ordered by the Code Enforcement Officer with written notice to the property owner.

ORDERED this 22nd day of July, 1996.

Stafford L. Smith, Deputy
King County Hearing Examiner

TRANSMITTED this 22nd day of July, 1996, by certified mail, to the following parties and interested persons:

Ralph & Teree Barber
665 East Lake Sammamish Shore Lane NE
Redmond, WA 98053

Michael & Katherine Peters
667 East Lake Sammamish Shore Lane NE
Redmond, WA 98053

David & Sandra Stark
1907 East Lake Sammamish Place SE
Redmond WA 98053

Daryl Deutsch
Attorney At Law
PO Box 3388
Kirkland, WA 98083-3388

TRANSMITTED this 22nd day of July, 1996, to the following:

Ken Dinsmore, DDES/Building Services
Steve Wright, DDES/Building Services

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless within twenty (20) days from the date of the decision an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the decision.

MINUTES OF THE JULY 15, 1996 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT
AND ENVIRONMENTAL SERVICES FILE NO. E91C1369 - STARK:

Stafford L. Smith was the Hearing Examiner in this matter. The hearing was combined with DDES File Nos. E91C1371 (Barber) and E91C1431 (Peters). Participating in the hearing were Steve Wright, Sandra Stark, Michael Peters, Katherine Peters, Ralph Barber, and Teree Barber.

The following exhibits were offered and entered into the record:

Exhibit No. 1	Department of Development and Environmental Services Preliminary Report to the King County Hearing Examiner for the July 15, 1996 public hearing
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Exhibit No. 2	Copy of Notice and Order issued May 24, 1996
Exhibit No. 3	Copy of Appeal received June 4, 1996
Exhibit No. 4	Copy of Referral from Land Use Services Division sent November 13, 1991
Exhibit No. 5	Copy of CE1 letter mailed on March 15, 1996
Exhibit No. 6	Copy of CE4 letter mailed November 22, 1991
Exhibit No. 7	Photo showing an over-water boat cover on nearby Lake Sammamish site
Exhibit No. 8	By reference: Video showing over-water boat covers on Lake Sammamish, taken by Michael Peters, entered as Exhibit No. 7 in related DDES File No. E91C1431

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